

ORIGINAL

THOMAS E. FRANKOVICH,
A Professional Law Corporation
THOMAS E. FRANKOVICH (State Bar No. 074414)
4328 Redwood Hwy., Suite 300
San Rafael, CA 94903
Telephone: 415/674-8600
Facsimile: 415/674-9900

(S) FILED
JUL 13 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
DURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES, an individual,

C V 10 3073
CASE NO.
Civil Rights
**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:**
1st CAUSE OF ACTION: For Denial of Access by a Public Accommodation in Violation of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*)
2nd CAUSE OF ACTION: For Denial of Full and Equal Access in Violation of California Civil Code §§54, 54.1 and 54.3
3rd CAUSE OF ACTION: For Denial of Accessible Sanitary Facilities in Violation of California Health & Safety Code §19955, *et seq.*
4th CAUSE OF ACTION: For Denial of

Plaintiff,

V.

DELANO RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER REVOCABLE LIVING TRUST.

Defendants.

4th CAUSE OF ACTION: For Denial of Access to Full and Equal Accommodations, Advantages, Facilities, Privileges and/or Services in Violation of California Civil Code §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiff CRAIG YATES, an individual, complains of defendants DELANO RETAIL
 2 PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA MARKET #1;
 3 and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER REVOCABLE LIVING
 4 TRUST and alleges as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical
 7 disabilities, of which class plaintiff CRAIG YATES and the disability community are members,
 8 for failure to remove architectural barriers structural in nature at defendants' DELANO'S IGA #1
 9 (hereinafter referred to as "DELANO'S MARKET, DELANO'S or MARKET"), a place of
 10 public accommodation, thereby discriminatorily denying plaintiff and the class of other similarly
 11 situated persons with physical disabilities access to, the full and equal enjoyment of, opportunity
 12 to participate in, and benefit from, the goods, facilities, services, and accommodations thereof.
 13 Plaintiff seeks injunctive relief and damages pursuant to the Americans with Disabilities Act of
 14 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51, 51.5 and 54, *et seq.*; and California
 15 Health & Safety Code §19955, *et seq.*

16 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about
 17 August 18, 2009, March 27, 2010, May 6, 2010, May 16, 1010 and June 6, 2010, was an invitee,
 18 guest, patron, customer at defendants' DELANO'S MARKET, in the City of San Francisco,
 19 California. At said times and place, defendants failed to provide proper legal access to the
 20 MARKET, which is a "public accommodation" and/or a "public facility" including, but not
 21 limited to signage, parking and door pressure. The denial of access was in violation of both
 22 federal and California legal requirements, and plaintiff CRAIG YATES suffered violation of his
 23 civil rights to full and equal access, and was embarrassed and humiliated.

24 ///

25 ///

26 ///

27 ///

28 //

1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
 3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
 4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
 5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel
 6 California law, whose goals are closely tied with the ADA, including but not limited to violations
 7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
 8 *seq.*, including §19959; Title 24 California Building Standards Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1331(b) and is
 10 founded on the facts that the real property which is the subject of this action is located at/near
 11 6333 Geary Boulevard, in the City and County of San Francisco, State of California, and that
 12 plaintiff's causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff CRAIG YATES is a “physically handicapped person”, a “physically
 15 disabled person”, and a “person with physical disabilities” (hereinafter the terms “physically
 16 disabled”, “physically handicapped” and “person with physical disabilities” are used
 17 interchangeably, as these words have similar or identical common usage and legal meaning, but
 18 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term “physically
 19 handicapped persons” and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other
 20 statutory measures refer to protection of the rights of “physically disabled persons”). Plaintiff
 21 CRAIG YATES is a “person with physical disabilities”, as defined by all applicable California
 22 and United States laws. Plaintiff is a triplegic. Plaintiff CRAIG YATES requires the use of a
 23 wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of that
 24 portion of the public whose rights are protected by the provisions of Health & Safety Code
 25 §19955, *et seq.* (entitled “Access to Public Accommodations by Physically Handicapped
 26 Persons”) and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the
 27 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.
 28 §12101, *et seq.*

1 6. Defendants DELANO RETAIL PARTNERS LLC, a California Limited Liability
 2 Company dba DELANO'S IGA MARKET #1; and ARTHUR S. BECKER, Trustee of the
 3 ARTHUR S. BECKER REVOCABLE LIVING TRUST (hereinafter alternatively collectively
 4 referred to as "defendants") are the owners and operators, lessors and/or lessees, or agents of the
 5 owners, lessors and/or lessees, of the public accommodation known as DELANO'S IGA
 6 MARKET, located at/near 6333 Geary Boulevard, San Francisco, California, or of the building
 7 and/or buildings which constitute said public accommodation.

8 7. At all times relevant to this complaint, defendants DELANO RETAIL
 9 PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA MARKET #1;
 10 and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER REVOCABLE LIVING
 11 TRUST, own and operate in joint venture the subject MARKET as a public accommodation.
 12 This business is open to the general public and conducts business therein. The business is a
 13 "public accommodation" or "public facility" subject to the requirements of California Civil Code
 14 §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C.
 15 §12101, *et seq.*

16 8. At all times relevant to this complaint, defendants DELANO RETAIL
 17 PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA MARKET #1;
 18 and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER REVOCABLE LIVING
 19 TRUST are jointly and severally responsible to identify and remove architectural barriers at the
 20 subject MARKET pursuant to Code of Federal Regulations title 28, section 36.201(b), which
 21 states in pertinent part:

22 **§ 36.201 General**

23 (b) *Landlord and tenant responsibilities.* Both the landlord
 24 who owns the building that houses a place of public
 25 accommodation and the tenant who owns or operates the place of
 26 public accommodation are public accommodations subject to the
 27 requirements of this part. As between the parties, allocation of
 28 responsibility for complying with the obligations of this part may
 be determined by lease or other contract.

27 28 CFR §36.201(b)

28 ///

1 **PRELIMINARY FACTUAL ALLEGATIONS:**

2 9. The DELANO'S IGA MARKET, is a grocery store, located at/near 6333 Geary
 3 Boulevard, San Francisco, California. The MARKET, its signage, parking, door pressure, and its
 4 other facilities are each a "place of public accommodation or facility" subject to the barrier
 5 removal requirements of the Americans with Disabilities Act. On information and belief, each
 6 such facility has, since July 1, 1970, undergone "alterations, structural repairs and additions,"
 7 each of which has subjected the MARKET and each of its facilities, its signage, parking and door
 8 pressure to disability access requirements per the Americans with Disabilities Act Accessibility
 9 Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).

10 10. On or about December of 1999, defendants' and each of them purchased and/or
 11 took possessory control of the premises now known as DELANO'S MARKET. At all times
 12 prior thereto, defendants' and each of them were aware of their obligation prior to the close of
 13 escrow, or upon taking possessory interest that public accommodations had a duty to identify and
 14 remove architectural barriers and were aware that DELANO'S MARKET was not accessible to
 15 the disabled. Nevertheless, defendants' and each of them, operated MARKET as though it was
 16 accessible.

17 11. At all times stated herein, defendants' and each of them with the knowledge that
 18 each of them had a continuing obligation to identify and remove architectural barriers where it
 19 was readily achievable to do so, failed to adopt a transition plan to provide better and/or
 20 compliant access to the subject accommodation.

21 12. At all times referred to herein and continuing to the present time, defendants, and
 22 each of them, advertised, publicized and held out the DELANO'S MARKET as being
 23 handicapped accessible and handicapped usable.

24 13. On or about August 18, 2009, March 27, 2010, May 6, 2010, May 16, 1010 and
 25 June 6, 2010, plaintiff CRAIG YATES was an invitee and guest at the subject DELANO'S
 26 MARKET, for purposes of grocery shopping.

27 ///

28 ///

1 14. On or about August 18, 2009, plaintiff CRAIG YATES drove his van into the
 2 parking lot of DELANO'S MARKET. Plaintiff CRAIG YATES encountered a parking lot
 3 which did not have parking signage for the disabled, any parking stalls designated for the
 4 disabled, the requisite number of parking stalls for the disabled, an accessible turn style/gate
 5 entry system, signage for accessible passage to the accessible men's and women's restroom or
 6 compliant door pressure for the men's restroom.

7 15. On or about March 27, 2010, May 6, 2010, May 16, 1010 and June 6, 2010,
 8 plaintiff CRAIG YATES encountered all of the same barriers as on August 18, 2009. However,
 9 as of March 27, 2010, plaintiff CRAIG YATES was aware of how a wheelchair user could gain
 10 access to the restrooms.

11 16. Therefore, at said time(s) and place, plaintiff CRAIG YATES, a person with a
 12 disability, encountered the following inaccessible elements of the subject DELANO'S MARKET
 13 which constituted architectural barriers and a denial of the proper and legally-required access to a
 14 public accommodation to persons with physical disabilities including, but not limited to:

- 15 a. lack of directional signage to show accessible routes of travel, i.e. path(s)
 to the restrooms;
- 16 b. lack of the requisite type and number of disabled parking stall(s);
- 17 c. lack of disabled van accessible parking stall(s);
- 18 d. lack of handicapped accessible parking signage;
- 19 e. lack of tow-a-way signage;
- 20 f. lack of an accessible interior entrance; and
- 21 g. On personal knowledge, information and belief, other public facilities and
 elements too numerous to list were improperly inaccessible for use by
 persons with physical disabilities.

22 ---

23 17. At all times stated herein, the existence of architectural barriers at defendants'
 24 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
 25 with the Americans with Disabilities Act of 1990 either then, now or in the future.

1 18. On or about May 11, 2010, defendant(s) were sent two (2) letters by or on behalf
2 of plaintiff CRAIG YATES advising of their need to take immediate action to remove
3 architectural barriers and requesting a written response upon receipt of his letter, promising to
4 immediately remove the barriers and providing a date when that would be accomplished. Said
5 letters are attached hereto collectively as exhibit "A" and incorporated by reference as though
6 fully set forth herein.

7 19. As a legal result of defendants DELANO RETAIL PARTNERS LLC, a California
8 Limited Liability Company dba DELANO'S IGA MARKET #1; and ARTHUR S. BECKER,
9 Trustee of the ARTHUR S. BECKER REVOCABLE LIVING TRUST's failure to act as a
10 reasonable and prudent public accommodation in identifying, removing or creating architectural
11 barriers, policies, practices and procedures that denied access to plaintiff and other persons with
12 disabilities, plaintiff suffered the damages as alleged herein.

13 20. As a further legal result of the actions and failure to act of defendants, and as a
14 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
15 herein, plaintiff was denied his civil rights to full and equal access to public facilities.

16 21. Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,
17 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,
18 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a
19 person with physical disabilities being denied access, all to his damages as prayed hereinafter in
20 an amount within the jurisdiction of this court. No claim is being made for mental and emotional
21 distress over and above that usually associated with the discrimination and physical injuries
22 claimed, and no expert testimony regarding this usual mental and emotional distress will be
23 presented at trial in support of the claim for damages.

24 22. Defendants', and each of their, failure to remove the architectural barriers
25 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to said public
26 accommodation, and continues to create continuous and repeated exposure to substantially the
27 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.
28

1 23. Plaintiff CRAIG YATES was denied his rights to equal access to a public facility
 2 by defendants DELANO RETAIL PARTNERS LLC, a California Limited Liability Company dba
 3 DELANO'S IGA MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S.
 4 BECKER REVOCABLE LIVING TRUST, because defendants DELANO RETAIL PARTNERS
 5 LLC, a California Limited Liability Company dba DELANO'S IGA MARKET #1; and ARTHUR
 6 S. BECKER, Trustee of the ARTHUR S. BECKER REVOCABLE LIVING TRUST maintained a
 7 supermarket without access for persons with physical disabilities to its facilities, including but not
 8 limited to signage, parking, door pressure, and other public areas as stated herein, and continue to
 9 the date of filing this complaint to deny equal access to plaintiff and other persons with physical
 10 disabilities in these and other ways.

11 24. On information and belief, construction alterations carried out by defendants have
 12 also triggered access requirements under both California law and the Americans with Disabilities
 13 Act of 1990.

14 25. Plaintiff, as described hereinbelow, seeks injunctive relief to require DELANO'S
 15 to be made accessible to meet the requirements of both California law and the Americans with
 16 Disabilities Act of 1990, whichever is more restrictive, so long as defendants operate the grocery
 17 store as a public facility.

18 26. Plaintiff seeks damages for violation of their civil rights on August 18, 2009,
 19 March 27, 2010, May 6, 2010, May 16, 1010 and June 6, 2010 and seeks statutory damages of
 20 not less than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code
 21 §54.3, for each day after his visit that the trier of fact (court/jury) determines was the date that
 22 some or all remedial work should have been completed under the standard that the landlord and
 23 tenant had an ongoing duty to identify and remove architectural barriers where it was readily
 24 achievable to do so, which deterred plaintiff CRAIG YATES from returning to the subject public
 25 accommodation because of his knowledge and/or belief that neither some or all architectural
 26 barriers had been removed and that said premises remains inaccessible to persons with disabilities
 27 whether a wheelchair user or otherwise.

28 ///

1 27. On information and belief, defendants have been negligent in their affirmative duty
2 to identify the architectural barriers complained of herein and negligent in the removal of some or
3 all of said barriers.

4 28. Because of defendants' violations, plaintiff and other persons with physical
5 disabilities are unable to use public facilities such as those owned and operated by defendants on a
6 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
7 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and
8 other accessibility law as plead herein. Plaintiff seeks an order from this court compelling
9 defendants to make the DELANO'S MARKET accessible to persons with disabilities.

10 29. On information and belief, defendants have intentionally undertaken to modify and
11 alter existing building(s), and have failed to make them comply with accessibility requirements
12 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each
13 of them, in failing to provide the required accessible public facilities at the time of plaintiff's visit
14 and injuries, indicate actual and implied malice toward plaintiff, and despicable conduct carried
15 out by defendants, and each of them, with a willful and conscious disregard for the rights and
16 safety of plaintiff and other similarly situated persons, and justify a trebling of damages as
17 provided by Civil Code §§52(a) and 54.3, in order to make a more profound example of
18 defendants, and each of them, to other operators and landlords of other grocery stores,
19 supermarkets, markets, convenient stores and other public facilities, and to punish defendants and
20 to carry out the purposes of the Civil Code §§ 51, 51.5 and 54.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 30. Plaintiff is informed and believes and therefore alleges that defendants
2 DELANO RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S
3 IGA MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER
4 REVOCABLE LIVING TRUST, and each of them, caused the subject building(s) which
5 constitute the DELANO'S MARKET to be constructed, altered and maintained in such a manner
6 that persons with physical disabilities were denied full and equal access to, within and throughout
7 said building(s) of the MARKET and were denied full and equal use of said public facilities.
8 Furthermore, on information and belief, defendants have continued to maintain and operate said
9 MARKET and/or its building(s) in such conditions up to the present time, despite actual and
10 constructive notice to such defendants that the configuration of the subject grocery store and/or its
11 building(s) is in violation of the civil rights of persons with physical disabilities, such as plaintiff
12 CRAIG YATES, and other members of the disability community. Such construction,
13 modification, ownership, operation, maintenance and practices of such public facilities are in
14 violation of Civil Code §§51, 51.5 and 54, Health and Safety Code §19955, and the ADA, 42
15 U.S.C. §12101, *et seq.*

16 31. On personal knowledge, information and belief, the basis of defendants' actual and
17 constructive notice that the physical configuration of the facilities including, but not limited to,
18 architectural barriers constituting the supermarket and/or building(s) was in violation of the civil
19 rights of persons with physical disabilities, such as plaintiff, includes, but is not limited to,
20 communications with invitees and guests, plaintiff CRAIG YATES himself, sponsors of
21 conferences for the grocery industry, grocery stores, supermarkets and businesses, notices they
22 obtained from governmental agencies upon modification, improvement, or substantial repair of
23 the subject premises and other properties owned by these defendants, newspaper articles and trade
24 publications regarding the Americans with Disabilities Act of 1990 and other access laws, public
25 service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and
26 other similar information. Defendants' failure, under state and federal law, to make DELANO'S
27 accessible is further evidence of defendants' conscious disregard for the rights of plaintiff and
28 other similarly situated persons with disabilities.

1 Despite being informed of such effect on plaintiff and other persons with physical disabilities due
 2 to the lack of accessible facilities, defendants, and each of them, knowingly and willfully refused
 3 to take any steps to rectify the situation and to provide full and equal access for plaintiff and other
 4 persons with physical disabilities to the subject grocery store. Said defendants, and each of them,
 5 have continued such practices, in conscious disregard for the rights of plaintiff and other persons
 6 with physical disabilities, up to the date of filing of this complaint, and continuing thereon.
 7 Defendants had further actual knowledge of the architectural barriers referred to herein by virtue
 8 of the demand letter addressed to the defendants and served concurrently with the summons and
 9 complaint. Said conduct, with knowledge of the effect it was and is having on plaintiff and other
 10 persons with physical disabilities, constitutes despicable conduct in conscious disregard of the
 11 rights and safety of plaintiff and of other similarly situated persons, justifying the imposition of
 12 treble damages per Civil Code §§52 and 54.3.

13 32. Plaintiff CRAIG YATES and the disability community, consisting of persons with
 14 disabilities, would, could and will return to the subject public accommodation when it is made
 15 accessible to persons with disabilities.

16 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC
 ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
 DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

17 (On behalf of Plaintiff CRAIG YATES, an individual and Against Defendants DELANO
 18 RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA
 19 MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER
 REVOCABLE LIVING TRUST, inclusive)
 20 (42 U.S.C. §12101, *et seq.*)

21 33. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 22 the allegations contained in paragraphs 1 through 32 of this complaint.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 34. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
 2 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
 3 protect:

4 some 43 million Americans with one or more physical or mental
 5 disabilities; [that] historically society has tended to isolate and
 6 segregate individuals with disabilities; [that] such forms of
 7 discrimination against individuals with disabilities continue to be a
 8 serious and pervasive social problem; [that] the nation's proper
 9 goals regarding individuals with disabilities are to assure equality of
 10 opportunity, full participation, independent living and economic
 11 self-sufficiency for such individuals; [and that] the continuing
 12 existence of unfair and unnecessary discrimination and prejudice
 13 denies people with disabilities the opportunity to compete on an
 14 equal basis and to pursue those opportunities for which our free
 15 society is justifiably famous.

16 35. Congress stated as its purpose in passing the Americans with Disabilities Act of
 17 1990 (42 U.S.C. §12102):

18 It is the purpose of this act (1) to provide a clear and comprehensive
 19 national mandate for the elimination of discrimination against
 20 individuals with disabilities; (2) to provide clear, strong, consistent,
 21 enforceable standards addressing discrimination against individuals
 22 with disabilities; (3) to ensure that the Federal government plays a
 23 central role in enforcing the standards established in this act on
 24 behalf of individuals with disabilities; and (4) to invoke the sweep
 25 of Congressional authority, including the power to enforce the 14th
 26 Amendment and to regulate commerce, in order to address the
 27 major areas of discrimination faced day to day by people with
 28 disabilities.

1 ///

2 ///

3 ///

4 ///

5 ///

6 ///

7 ///

8 ///

9 ///

10 ///

11 ///

1 36. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
 2 (hereinafter the “ADA”), Congress passed “Title III - Public Accommodations and Services
 3 Operated by Private Entities” (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
 4 accommodations identified for purposes of this title was:

5 (7) PUBLIC ACCOMMODATION - The following private
 6 entities are considered public accommodations for purposes of this
 7 title, if the operations of such entities affect commerce -
 8 ---

9 (E) a bakery, grocery store, clothing store, hardware store,
 10 shopping center, or other sales or rental establishment.
 11

12 42 U.S.C. §12181(7)(E)

13 37. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated against
 14 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
 15 privileges, advantages, or accommodations of any place of public accommodation by any person
 16 who owns, leases, or leases to, or operates a place of public accommodation.”

17 38. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
 18 42 U.S.C. §12182(b)(2)(a) are:

19 (I) the imposition or application of eligibility criteria
 20 that screen out or tend to screen out an individual with a disability
 21 or any class of individuals with disabilities from fully and equally
 22 enjoying any goods, services, facilities, privileges, advantages, or
 23 accommodations, unless such criteria can be shown to be necessary
 24 for the provision of the goods, services, facilities, privileges,
 25 advantages, or accommodations being offered;

26 (ii) a failure to make reasonable modifications in
 27 policies, practices, or procedures, when such modifications are
 28 necessary to afford such goods, services, facilities, privileges,
 29 advantages or accommodations to individuals with disabilities,
 30 unless the entity can demonstrate that making such modifications
 31 would fundamentally alter the nature of such goods, services,
 32 facilities, privileges, advantages, or accommodations;

33 (iii) a failure to take such steps as may be necessary to
 34 ensure that no individual with a disability is excluded, denied
 35 services, segregated or otherwise treated differently than other
 36 individuals because of the absence of auxiliary aids and services,
 37 unless the entity can demonstrate that taking such steps would
 38 fundamentally alter the nature of the good, service, facility,
 39 privilege, advantage, or accommodation being offered or would
 40 result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

6 The acts of defendants set forth herein were a violation of plaintiff's rights under the ADA, Public
7 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective
8 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code
9 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

10 39. The removal of the barriers complained of by plaintiff as hereinabove alleged were
11 at all times after January 26, 1992 "readily achievable" as to the subject building(s) of
12 DELANO'S MARKET pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and
13 belief, if the removal of all the barriers complained of herein together was not "readily
14 achievable," the removal of each individual barrier complained of herein was "readily
15 achievable." On information and belief, defendants' failure to remove said barriers was likewise
16 due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182
17 (b)(2)(A)(i)and (ii).

18 40. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
19 accomplishable and able to be carried out without much difficulty or expense.” The statute
20 defines relative “expense” in part in relation to the total financial resources of the entities
21 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
22 plaintiff complains of herein were and are “readily achievable” by the defendants under the
23 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
24 not “readily achievable” for defendants to remove each of such barriers, defendants have failed to
25 make the required services available through alternative methods which were readily achievable.

26 | //

27 | //

28 | //

1 41. On information and belief, construction work on, and modifications of, the subject
 2 building(s) of DELANO'S MARKET occurred after the compliance date for the Americans with
 3 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III of
 4 the ADA.

5 42. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
 6 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
 7 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis
 8 of disability in violation of this title or have reasonable grounds for believing that plaintiff is about
 9 to be subjected to discrimination in violation of §302. Plaintiff is deterred from returning to or
 10 making use of the public facilities complained of herein so long as the premises and defendants'
 11 policies bar full and equal use by persons with physical disabilities.

12 43. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a
 13 disability to engage in a futile gesture if such person has actual notice that a person or
 14 organization covered by this title does not intend to comply with its provisions." Pursuant to this
 15 section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about
 16 June 6, 2010, but on information and belief, alleges that defendants have continued to violate the
 17 law and deny the rights of plaintiff and of other persons with physical disabilities to access this
 18 public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of
 19 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
 20 facilities readily accessible to and usable by individuals with disabilities to the extent required by
 21 this title."

22 44. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
 23 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
 24 the Americans with Disabilities Act of 1990, including but not limited to an order granting
 25 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being
 26 deemed to be the prevailing party.

27 ///

28 ///

1 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS
IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**

2 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants DELANO
3 RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA
4 MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER
REVOCABLE LIVING TRUST, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

5 45. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the
6 allegations contained in paragraphs 1 through 44 of this complaint.

7 46. At all times relevant to this action, California Civil Code §54 has provided that
8 persons with physical disabilities are not to be discriminated against because of physical handicap
9 or disability. This section provides that:

10 (a) Individuals with disabilities . . . have the same rights as
11 the general public to full and free use of the streets, highways,
12 sidewalks, walkways, public buildings, medical facilities, including
13 hospitals, clinics, and physicians' offices, and other public places.

14 47. California Civil Code §54.1 provides that persons with disabilities shall not be
15 denied full and equal access to places of public accommodation or facilities:

16 (a)(1) Individuals with disabilities shall be entitled to full
17 and equal access, as other members of the general public, to
18 accommodations, advantages, facilities, medical facilities, including
19 hospitals, clinics, and physicians' offices, and privileges of all
20 common carriers, airplanes, motor vehicles, railroad trains,
21 motorbuses, streetcars, boats, or any other public conveyances or
22 modes of transportation (whether private, public, franchised,
23 licensed, contracted, or otherwise provided), telephone facilities,
24 adoption agencies, private schools, hotels, lodging places, places of
25 public accommodation, amusement or resort, and other places to
26 which the general public is invited, subject only to the conditions
27 and limitations established by law, or state or federal regulation, and
28 applicable alike to all persons.

29 Civil Code §54.1(a)(1)

30 48. California Civil Code §54.1 further provides that a violation of the Americans with
31 Disabilities Act of 1990 constitutes a violation of section 54.1:

32 (d) A violation of the right of an individual under the
33 Americans with Disabilities Act of 1990 (Public Law 101-336) also
34 constitutes a violation of this section, and nothing in this section
35 shall be construed to limit the access of any person in violation of
36 that act.

37 Civil Code §54.1(d)

38 ///

1 49. Plaintiff CRAIG YATES is a person within the meaning of Civil Code §54.1
 2 whose rights have been infringed upon and violated by the defendants, and each of them, as
 3 prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants
 4 knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil
 5 Code §§54 and 54.1. Plaintiff has been and continue to be denied full and equal access to
 6 defendants' DELANO'S MARKET. As a legal result, plaintiff is entitled to seek damages
 7 pursuant to a court or jury determination, in accordance with California Civil Code §54.3(a) for
 8 each day on which he visited or have been deterred from visiting DELANO'S because of his
 9 knowledge and belief that the subject grocery store is inaccessible to persons with disabilities.
 10 California Civil Code §54.3(a) provides:

11 Any person or persons, firm or corporation, who denies or interferes
 12 with admittance to or enjoyment of the public facilities as specified
 13 in Sections 54 and 54.1 or otherwise interferes with the rights of an
 14 individual with a disability under Sections 54, 54.1 and 54.2 is
 15 liable for each offense for the actual damages and any amount as
 16 may be determined by a jury, or the court sitting without a jury, up
 to a maximum of three times the amount of actual damages but in
 no case less than . . . one thousand dollars (\$1,000) and . . .
 attorney's fees as may be determined by the court in addition
 thereto, suffered by any person denied any of the rights provided in
 Sections 54, 54.1 and 54.2.

17 Civil Code §54.3(a)

18 50. On or about August 18, 2009, March 27, 2010, May 6, 2010, May 16, 1010 and
 19 June 6, 2010, plaintiff CRAIG YATES suffered violations of Civil Code §§54 and 54.1 in that
 20 plaintiff CRAIG YATES was denied access to signage, parking, door pressure and other public
 21 facilities as stated herein at DELANO'S MARKET and on the basis that plaintiff CRAIG YATES
 22 was a person with physical disabilities.

23 51. As a result of the denial of equal access to defendants' facilities due to the acts and
 24 omissions of defendants, and each of them, in owning, operating and maintaining these subject
 25 public facilities, plaintiff suffered violations of plaintiff's civil rights, including but not limited to
 26 rights under Civil Code §§54, 54.1 and 54.3.

27 ///

28 ///

1 52. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental
 2 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment
 3 and worry, all of which are expectedly and naturally associated with a denial of access to a person
 4 with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and
 5 omissions to act constituted discrimination against plaintiff on the sole basis that plaintiff is a
 6 person or an entity that represents persons with physical disabilities and unable, because of the
 7 architectural barriers created and maintained by the defendants in violation of the subject laws, to
 8 use the public facilities hereinabove described on a full and equal basis as other persons.

9 53. Plaintiff has been damaged by defendants', and each of their, wrongful conduct and
 10 seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiff's rights
 11 as a person or an entity that represents persons with physical disabilities on or about August 18,
 12 2009, March 27, 2010, May 6, 2010, May 16, 1010 and June 6, 2010, and on a continuing basis
 13 since then, including statutory damages, a trebling of all of actual damages, general and special
 14 damages available pursuant to §54.3 of the Civil Code according to proof.

15 54. As a result of defendants', and each of their, acts and omissions in this regard,
 16 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce
 17 plaintiff's rights and enforce the provisions of the law protecting access for persons with physical
 18 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
 19 the provisions of Civil Code §54.3, plaintiff therefore will seek recovery in this lawsuit for all
 20 reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,
 21 plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to
 22 compel the defendants to make their facilities accessible to all members of the public with
 23 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to
 24 the provisions of §1021.5 of the Code of Civil Procedure.

25 ///

26 ///

27 ///

28 ///

1 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**
 2 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.**
 3 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants DELANO
 4 RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA
 5 MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER
 6 REVOCABLE LIVING TRUST, inclusive)
 7 (Health & Safety Code §19955, *et seq.*)

55. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 6 the allegations contained in paragraphs 1 through 54 of this complaint.

56. Health & Safety Code §19955 provides in pertinent part:

8 The purpose of this part is to insure that public accommodations or
 9 facilities constructed in this state with private funds adhere to the
 10 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5
 11 of Title 1 of the Government Code. For the purposes of this part
 12 “public accommodation or facilities” means a building, structure,
 13 facility, complex, or improved area which is used by the general
 14 public and shall include auditoriums, hospitals, theaters, restaurants,
 15 hotels, motels, stadiums, and convention centers. When sanitary
 16 facilities are made available for the public, clients or employees in
 17 such accommodations or facilities, they shall be made available for
 18 the handicapped.

14 57. Health & Safety Code §19956, which appears in the same chapter as §19955,
 15 provides in pertinent part, “accommodations constructed in this state shall conform to the
 16 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government
 17 Code” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all
 18 public accommodations constructed or altered after that date. On information and belief, portions
 19 of the DELANO'S MARKET and/or of the building(s) were constructed and/or altered after July
 20 1, 1970, and substantial portions of the MARKET and/or the building(s) had alterations, structural
 21 repairs, and/or additions made to such public accommodations after July 1, 1970, thereby
 22 requiring said MARKET and/or building to be subject to the requirements of Part 5.5, §19955, *et*
 23 *seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions per Health
 24 & Safety Code §19959.

25 ///

26 ///

27 ///

28 ///

1 58. Pursuant to the authority delegated by Government Code §4450, *et seq*, the State
2 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
3 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
4 Regulations and these regulations must be complied with as to any alterations and/or
5 modifications of DELANO'S MARKET and/or the building(s) occurring after that date.
6 Construction changes occurring prior to this date but after July 1, 1970 triggered access
7 requirements pursuant to the "ASA" requirements, the American Standards Association
8 Specifications, A117.1-1961. On information and belief, at the time of the construction and
9 modification of said building, all buildings and facilities covered were required to conform to
10 each of the standards and specifications described in the American Standards Association
11 Specifications and/or those contained in Title 24 of the California Building Standards Code.

12 59. Grocery stores, supermarkets and convenient stores such as the DELANO'S
13 MARKET are "public accommodations or facilities" within the meaning of Health & Safety Code
14 §19955, *et seq*.

15 60. As a result of the actions and failure to act of defendants, and as a result of the
16 failure to provide proper and legally handicapped-accessible public facilities, plaintiff was denied
17 plaintiff's rights to full and equal access to public facilities and suffered a loss of plaintiff's civil
18 rights and plaintiff's rights as a person with physical disabilities to full and equal access to public
19 facilities.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 61. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
 2 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's
 3 civil rights and enforce provisions of the law protecting access for the persons with physical
 4 disabilities and prohibiting discrimination against the persons with physical disabilities, and to
 5 take such action both in plaintiff's own interests and in order to enforce an important right
 6 affecting the public interest. Plaintiff, therefore, seeks in this lawsuit the recovery of all
 7 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
 8 §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953
 9 and Civil Code §§54.3 and/or in the alternative, plaintiff will seek attorneys' fees, costs and
 10 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).
 11 Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

12 62. Plaintiff seeks injunctive relief for an order compelling defendants, and each of
 13 them, to make the subject place of public accommodation readily accessible to and usable by
 14 persons with disabilities.

15 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND
 EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES
 AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET
 SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

16 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants DELANO
 RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA
 MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER
 REVOCABLE LIVING TRUST, inclusive)
 17 (Civil Code §51, 51.5)

18 63. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 19 the allegations contained in paragraphs 1 through 62 of this complaint.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 64. Defendants' actions and omissions and failure to act as a reasonable and prudent
 2 public accommodation in identifying, removing and/or creating architectural barriers, policies,
 3 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
 4 Unruh Act provides:

5 This section shall be known, and may be cited, as the Unruh
 6 Civil Rights Act.

7 All persons within the jurisdiction of this state are free and
 8 equal, and no matter what their sex, race, color, religion, ancestry, national origin, or **disability** are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

9
 10 This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or **disability**.

11
 12 Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure . . . nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other . . . laws.

13
 14 A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

15
 16 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 17 "intent" of the defendants in not complying with barrier removal is not an issue. Hence, the
 18 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
 19 failing to act to identify and remove barriers can be construed as a "negligent per se" act of
 20 defendants, and each of them.

21 ///

22 ///

23 ///

24 ///

1 65. The acts and omissions of defendants stated herein are discriminatory in nature and
 2 in violation of Civil Code §51.5:

3 No business establishment of any kind whatsoever shall
 4 discriminate against, boycott or blacklist, refuse to buy from, sell to,
 5 or trade with any person in this state because of the race, creed,
 6 religion, color, national origin, sex, or **disability** of the person or of
 the person's partners, members, stockholders, directors, officers,
 managers, superintendents, agents, employees, business associates,
 suppliers, or customers.

7 As used in this section, "person" includes any person, firm
 8 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

9 Nothing in this section shall be construed to require any
 10 construction, alteration, repair, structural or otherwise, or
 11 modification of any sort whatsoever, beyond that construction,
 12 alteration, repair or modification that is otherwise required by other
 13 provisions of law, to any new or existing establishment, facility,
 building, improvement, or any other structure . . . nor shall anything
 14 in this section be construed to augment, restrict or alter in any way
 the authority of the State Architect to require construction,
 alteration, repair, or modifications that the State Architect otherwise
 possesses pursuant to other laws.

15 66. Defendants' acts and omissions as specified have denied to the plaintiff full and
 16 equal accommodations, advantages, facilities, privileges and services in a business establishment,
 17 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil
 18 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A
 19 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public
 20 Law 101-336) shall also constitute a violation of this section." Plaintiff accordingly incorporates
 21 the entirety of his above cause of action for violation of the Americans with Disabilities Act at
 22 §33, *et seq.*, as if replied herein.

23 67. As a further legal result of the actions and failure to act of defendants, and as a
 24 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
 25 herein, plaintiff was denied his civil rights to full and equal access to public facilities. Plaintiff
 26 CRAIG YATES suffered a loss of his civil rights and his rights as a person with physical
 27 disabilities to full and equal access to public facilities.

28 ///

1 68. Further, plaintiff CRAIG YATES suffered mental distress, mental
 2 suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,
 3 disappointment and worry, all of which are expectedly and naturally associated with a denial of
 4 access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated.
 5 Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole
 6 basis that plaintiff is a person or an entity that represents persons with physical disabilities and
 7 unable, because of the architectural barriers created and maintained by the defendants in violation
 8 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as
 9 other persons.

10 69. Plaintiff CRAIG YATES is entitled to the rights and remedies of §52(a)
 11 of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to
 12 mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is
 13 allowed by statute, according to proof if deemed to be the prevailing party.

14 **PRAYER:**

15 Plaintiff prays that this court award damages and provide relief as follows:

16 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A
 17 PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
 18 DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**
 19 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants DELANO
 20 RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA
 21 MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER
 22 REVOCABLE LIVING TRUST, inclusive)
 23 (42 U.S.C. §12101, *et seq.*)

24 1. For injunctive relief, compelling defendants DELANO RETAIL PARTNERS LLC,
 25 a California Limited Liability Company dba DELANO'S IGA MARKET #1; and ARTHUR S.
 26 BECKER, Trustee of the ARTHUR S. BECKER REVOCABLE LIVING TRUST, inclusive, to
 27 make the DELANO'S MARKET, located at 6333 Geary Boulevard, San Francisco, California,
 28 readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and
 29 to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to
 30 afford full access to the goods, services, facilities, privileges, advantages and accommodations
 31 being offered.

1 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed the
 2 prevailing party; and

3 3. For such other and further relief as the court may deem proper.

4 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND
 5 EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1
 6 AND 54.3, ET SEO.**

7 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants DELANO
 8 RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA
 9 MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER
 10 REVOCABLE LIVING TRUST, inclusive)

11 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

12 1. For injunctive relief, compelling defendants DELANO RETAIL PARTNERS LLC,
 13 a California Limited Liability Company dba DELANO'S IGA MARKET #1; and ARTHUR S.
 14 BECKER, Trustee of the ARTHUR S. BECKER REVOCABLE LIVING TRUST, inclusive, to
 15 make the DELANO'S MARKET, located at 6333 Geary Boulevard, California, readily accessible
 16 to and usable by individuals with disabilities, per state law.

17 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for
 18 each occasion on which plaintiff was deterred from returning to the subject public
 19 accommodation.

20 3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5,
 21 if plaintiffs are deemed the prevailing party;

22 4. Treble damages pursuant to Civil Code §54.3;

23 5. General damages according to proof;

24 6. For all costs of suit;

25 7. Prejudgment interest pursuant to Civil Code §3291; and

26 8. Such other and further relief as the court may deem just and proper.

27 ///

28 ///

29 ///

30 ///

1 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
2 SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
3 §19955, ET. SEQ.**

4 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants DELANO
5 RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA
6 MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER
7 REVOCABLE LIVING TRUST, inclusive)
8 (Health & Safety code §19955, *et seq.*)

9 1. For injunctive relief, compelling defendants DELANO RETAIL PARTNERS LLC,
10 a California Limited Liability Company dba DELANO'S IGA MARKET #1; and ARTHUR S.
11 BECKER, Trustee of the ARTHUR S. BECKER REVOCABLE LIVING TRUST, inclusive, to
12 make the DELANO'S MARKET, located at 6333 Geary Boulevard, California, readily accessible
13 to and usable by individuals with disabilities, per state law.

14 2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,
15 alternatively, Health & Safety Code §19953, if plaintiff is deemed the prevailing party;

- 16 3. For all costs of suit;
17 4. For prejudgment interest pursuant to Civil Code §3291;
18 5. Such other and further relief as the court may deem just and proper.

19 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
20 FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
21 PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
22 CODE §51, ET SEO. (THE UNRUH CIVIL RIGHTS ACT)**

23 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants DELANO
24 RETAIL PARTNERS LLC, a California Limited Liability Company dba DELANO'S IGA
25 MARKET #1; and ARTHUR S. BECKER, Trustee of the ARTHUR S. BECKER
26 REVOCABLE LIVING TRUST, inclusive)
27 (California Civil Code §§51, 51.5, *et seq.*)

28 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and
for each occasion on which plaintiff was deterred from returning to the subject public
accommodation;

- 29 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiff is deemed the prevailing
party;
30 3. General damages according to proof;
31 4. Treble damages pursuant to Civil Code §52(a);

32 ///

5. For all costs of suit;
 6. Prejudgment interest pursuant to Civil Code §3291; and
 7. Such other and further relief as the court may deem just and proper.

Dated: 6/18/10, 2010 THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

THOMAS E. FRANKOVICH,

A PROFESSIONAL LAW CORPORATION

By:

THOMAS E. FRANKOVICH

Attorneys for Plaintiff CRAIG YATES, an individual

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: 6/18/10, 2010 THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

THOMAS E. FRANKOVICH.

THOMAS L. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

By:

THOMAS E. FRANKOVICH

Attorneys for Plaintiff CRAIG YATES, an individual

Craig Yates
1004 Los Gamos Road, Unit E
San Rafael, CA 94903

May 11, 2010

Manager
DeLano's Market
6333 Geary Boulevard
San Francisco, CA 94121

Dear Manager of DeLano's Market:

Recently, I visited DeLano's Market. I go into the city weekly and often take Geary up to 19th Ave./Presidio and over to the Golden Gate. So on occasions, I stop in. There are a few problems that need your immediate attention. You see, I use a wheelchair. Wheelchair users like me (as I did) have a problem with no place to park a van. Then when I needed to use your accessible men's restroom the sign said "use the stairs." I found out there was an elevator. What you need is some signage for chair users like me.

I thought the landlord and the tenant should know about this. That's why I wrote this identical letter to both of you. It's like letting the right hand know what the left hand is doing! If you both put your hands and heads together, I know the two of you can fix this problem.

You need to learn what needs to be done and do it now. So to help you, please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, and ask them to send you all the information they have on access. I think they have specific information for grocery stores. Just ask. Remember, wheelchair users have an old saying: "Access delayed is Access denied!" You understand, right? Anyway, please write me when you get this letter, tell me exactly what will be done and make me a promise that you will take care of this right away. Give me a date. If you are not the one in charge or don't have the responsibility to do it, would you make sure this letter goes to the person in charge or who can make decisions on what to do. Thanks!

Sincerely,


Craig Yates

Craig Yates
1004 Los Gamos Road, Unit E
San Rafael, CA 94903

May 11, 2010

Owner of the Building
DeLano's Market
6333 Geary Boulevard
San Francisco, CA 94121

Dear Owner of Building for DeLano's Market:

Recently, I visited DeLano's Market. I go into the city weekly and often take Geary up to 19th Ave./Presidio and over to the Golden Gate. So on occasions, I stop in. There are a few problems that need your immediate attention. You see, I use a wheelchair. Wheelchair users like me (as I did) have a problem with no place to park a van. Then when I needed to use your accessible men's restroom the sign said "use the stairs." I found out there was an elevator. What you need is some signage for chair users like me.

I thought the landlord and the tenant should know about this. That's why I wrote this identical letter to both of you. It's like letting the right hand know what the left hand is doing! If you both put your hands and heads together, I know the two of you can fix this problem.

You need to learn what needs to be done and do it now. So to help you, please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, and ask them to send you all the information they have on access. I think they have specific information for grocery stores. Just ask. Remember, wheelchair users have an old saying: "Access delayed is Access denied!" You understand, right? Anyway, please write me when you get this letter, tell me exactly what will be done and make me a promise that you will take care of this right away. Give me a date. If you are not the one in charge or don't have the responsibility to do it, would you make sure this letter goes to the person in charge or who can make decisions on what to do. Thanks!

Sincerely,



Craig Yates